Supreme Court, U.S.
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No. 93-446

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

HPY INC.,
Petitioner,

v.

ELECTRIC POWER AUTHORITY, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

REPLY BRIEF IN OPPOSITION TO BRIEF FILED BY RESPONDENT PUERTO RICO AQUEDUCT & SEWER AUTHORITY

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Petitioner, HPY Inc. (hereinafter "HPY") respectfully opposes the Brief in Opposition filed by the Puerto Rico Aqueduct and Sewer Authority.

Although the reasons which we believe warrant the grant of a writ are adequately

stated in the petition, we believe a brief reply is warranted to correct several assertions contained in the Brief in Opposition filed by respondent, Puerto Rico Aqueduct and Sewer Authority (hereinafter "PRASA").

The assertions by the respondent fall into two areas:

1. *The "Exhaustion of Available State Remedies" Issue.*

(a) The Brief in Opposition states (p.3):

> "...even if the complaint could somehow be construed as an invasion of HPY's land by PRASA, it was insufficient to state a cognizable claim under 42 U.S.C. § 1983 in view of the fact that state remedies were available, citing the holdings in *Williamson Planning Comm'n v. Hamilton Bank (incorrectly cited name of case)*, 473 U.S. 172 (1985), *Culebras Enterprises v. Rivera Rios*, 813 F.2d 506 (1st Cir. 1987) and *Ochoa Realty Corp. v. Faria*, 815 F.2d 812 (1st Cir. 1987)..."

on page 4 states:

> "...HPY also disputes the availability of remedies for the alleged misconduct before the Commonwealth Courts. But this dispute plainly presents no issue for

this Court's review..."

The facts are stated in the Petition for Writ of Certiorari and are accompanied by Final Orders and Judgments from the Commonwealth Court's of the Commonwealth of Puerto Rico in the appendix. There is a Res Judicata effect in requesting that HPY avail itself of state remedies because the Orders and Judgments rendered against HPY have either been dismissed with prejudice or intervention in actions pending before Commonwealth Courts have been denied. Pet. App. A-53, A-60.

Furthermore, public records were available to respondent(s) which would have put them on notice that the land rightfully and legally belonged to HPY before commencing with any public works projects. Pet. App. A-122-162.

Respondent incorrectly asserts that HPY agreed that its invaded property was not being developed by the public agencies. Opp. Brief p. 6. What is demonstrated by this Minute Order is that the Commonwealth of Puerto Rico had no

intent to expropriate HPY's land on the mistaken belief that it had surveyed the correct parcel of land. A Court Appointed Expert demonstrated otherwise (Pet. App. [illegible]-111) which, perhaps understandably, in nowhere mentioned in the Brief in Opposition. Thus, the exhaustion of available state remedies is perfected and ripe for review under the *Williamson County* rationale. The non sequitur is, we hope obvious.

Moreover, two and only two allegations are required in order to state a cause of action under 42 U.S.C. § 1983:

> 1. The plaintiff must allege that some person has deprived him of a federal right.
>
> 2. the plaintiff must allege that the person who has deprived him of that right acted under color of state or territorial law.

The complaint states the necessary elements under section 1983 and nowhere in the statute or in the legislative history is it mentioned that available state remedies have to

be exhausted before pursuing a Civil Rights Action.

Furthermore, respondent's reliance on the First Circuit's finding that the availability of remedies in the Commonwealth Courts defeated HPY's due process is unfounded. The Supreme Court in *Williamson County* expressly distinguished due process from takings claims, stating that the due process clause may be violated regardless of the availability of post-deprivation remedies. *Williamson County*, 473 U.S. at 195-96 n. 14.

2. *The "Heightened Pleading" Issue.*

The Petition for Writ of Certiorari clearly stated the fact that the District Court stated in it's Order (Pet. App. A-17) that the First Circuit:

> "has been particularly insistent in section 1983 cases to require a fair degree of specificity -- a foundation of material facts -- to survive a motion to dismiss."

The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. Such simplified notice pleading is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues. *Conley v. Gibson*, 355 U.S. 41; *Charlene Leatherman, et al. v. Tarrant County Narcotics Intelligence and Coordination Unit, et al.*, 61 L.W. 4205, 4206-07. (March 3, 1993).

In conclusion, it is important to note that the Brief in Opposition filed by respondent on October 13, 1993 was mailed to petitioner on October 14, 1993 in violation of Supreme Court Rule 29.3 which states that:

> "Any pleading, motion, notice, brief, or other document required by these Rules to be served may be served personally or by mail on each party to the proceeding at or before the time of filing..."

To certify to this Honorable Court that

Respondent has complied with the Rules of the Supreme Court with respect to service, constitutes a fraud upon the court when Petitioner received the envelope with an October 14, 1993 cancelled postmark.

Finally, we believe, therefore, that a review by this Court is warranted and for the foregoing reasons stated in the petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

RESPECTFULLY SUBMITTED.

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CERTIFICATE OF SERVICE

I, Adrian Mercado, one of the counsel for HPY Inc., and ~~a member~~ of the Bar of the Supreme Court of the United States, hereby certify that, on the 29th day of October, 1993, I served three copies of the reply brief in response to Puerto Rico Aqueduct & Sewer Authority's Opposition Brief on each of the several parties thereto, as follows:

1. On Mirta E. Rodriguez, Esq., Reina Colon Rodriguez, Esq., Carlos Lugo Fiol, Esq., by mailing nine copies by certified mail, with first-class postage prepaid, to the Federal Litigation Division, Department of Justice, P.O. Box 192, San Juan, Puerto Rico, 00902. (809) 721-5636. These Attorneys represent the following parties:

   a. Rural Housing Administration.

   b. Maria Margarita Irizarry, in her individual capacity and as Former Director of the Aqueduct and Sewer Authority.

   c. Gamalier Rodriguez, in his individual capacity and as Former Director of The Rural Housing Administration.

2. On Pedro Santiago Torres, Esq., by mailing six copies by certified mail, with first-class postage prepaid, to P.O. Box 363928, San Juan, Puerto Rico, 00936-3928. (809) 725-1857. This Attorney represents the following:

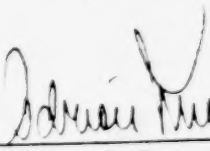
   a. Electric Power Authority.

   b. Jose A. Del Valle, in his individual capacity and as Former Director of The Electric Power Authority.

3. On Jorge Marrero Narvaez, Esq., by mailing three copies by certified mail, with first-class postage prepaid, to P.O. Box 7066, Bo. Obrero Station, Santurce, Puerto Rico, 00916. (809) 758-2542. Who represents the Puerto Rico Aqueduct and Sewer Authority.

4. On Arturo Trias, Esq., and Miguel R. Garay Auban, Esq., by mailing three copies by certified mail, with first-class postage prepaid, to P.O. Box 366283, San Juan, Puerto Rico, 00936-6283. (809) 753-7777. Who represent the Puerto Rico Aqueduct and Sewer Authority.

It is further certified that all parties required to be served have been served, and that the list of such parties is as set forth above.



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